

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Establish
Policies and Criteria to Authorize an Increase in
the Rate of Return Allowed an Electrical
Corporation on its Electric Plant Due to
Sustainable Land and Resource Management
Practices pursuant to Pub. Util. Code 454.3.

Rulemaking 03-03-015
(Filed March 13, 2003)

**ADMINISTRATIVE LAW JUDGE'S RULING
REGARDING NOTICES OF INTENT TO CLAIM COMPENSATION**

1. Summary

This ruling responds to the notices of intent (NOIs) to claim compensation that were separately filed by California Hydropower Reform Coalition (CHRC), Environmental Defense (ED), and The Utility Reform Network (TURN). This ruling addresses the requirements of Pub. Util. Code, Article 5, §§ 1801 *et seq.*¹ After consultation with the Assigned Commissioner, I find that CHRC has met all relevant requirements including significant financial hardship and is eligible for compensation in this proceeding. I find that ED is a customer eligible for compensation subject to a later showing of significant financial hardship. I also find that TURN has met all relevant requirements including significant financial hardship and is eligible for compensation in this proceeding.

¹ All statutory references are to the Public Utilities Code.

2. Background

Under § 1804(a)(1), “[a] customer who intends to seek an award under this article shall, within 30 days after the prehearing conference is held, file and serve on all parties to the proceeding a notice of intent to claim compensation.” The prehearing conference in this proceeding was held on May 20, 2003. All NOIs were timely filed. No responses were filed to any of the NOIs. CHRC filed an amended NOI on July 25, 2003. There have been no objections to CHRC’s amended filing. The amended NOI relates back to the timely filed NOI, and will be considered timely.

Section 1804(a)(2) sets forth those items that must be addressed in an NOI. Pursuant to Decision (D.) 98-04-059, this ruling must determine whether the intervenor is a customer, as defined in § 1802(b), identifying whether the intervenor is a participant representing consumers, or a representative authorized by a customer, or a representative of a group or organization that is authorized by its bylaws or articles of incorporation to represent the interests of residential ratepayers. Participation in Commission proceedings by parties representing the full range of affected interests is important. Such participation assists the Commission in ensuring that the record is fully developed and that each customer group receives adequate representation.

Once the applicable definition of “customer” is identified, the correct standard of “significant financial hardship” can be applied. Only those customers for whom participation or intervention would impose a significant financial hardship may receive intervenor compensation. Section 1804(a)(2)(B) allows the customer to include a showing of significant financial hardship in the NOI. Alternatively, the required showing may be made in the request for an award of compensation. Section 1802(g) defines “significant financial hardship”

to mean either that the customer cannot without undue hardship afford to pay the costs of effective participation, including advocate's fees, expert witness fees, and other reasonable costs of participation, or that, in the case of a group or organization, the economic interest of the individual members of the group or organization is small in comparison to the costs of effective participation in the proceeding.

A finding of eligibility does not relieve the intervenors of their obligations to fulfill all other statutory requirements. They must fully support their requests for compensation when made, including demonstrating that they have made a substantial contribution in this proceeding, and the reasonableness of the hours spent and hourly rates applied. They must comply with the Commission's policies for reducing certain rates and hours claimed, *e.g.*, for travel time and time spent on the compensation request itself.

Parties with similar interests are encouraged to coordinate efforts so that parties materially supplement, complement, or contribute to each other's presentations. Compensation will not be paid for participation on issues that are irrelevant, outside the scope of the proceeding, or beyond the Commission's jurisdiction to resolve.

3. CHRC

CHRC is an unincorporated association of non-governmental organizations and individuals organized to represent and advocate the interests of individuals and organizations concerned about the impact of hydropower projects on rivers in California. According to its governing protocols, which have been filed with its amended NOI, CHRC is authorized to intervene or participate as appropriate on behalf of its members, including the individual members of non-profit organizations, in proceedings before the Commission. In

its amended NOI, CHRC states that it has determined that its 25 member organizations have more than 28,600 members who are customers of the three utility respondents in this proceeding, Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), and San Diego Gas & Electric Company (SDG&E). CHRC estimates that almost all these customers are residential. CHRC qualifies as a customer because it is an organization that is authorized by its governing protocols to represent the interests of its members, an overwhelming portion of whom are residential customers.² CHRC meets the third definition of customer, as set forth in § 1802(b).

CHRC seeks, pursuant to § 1804(b)(1), a determination that it faces significant financial hardship in participating in this proceeding. Since CHRC is a Category 3 customer, it must show that the economic interest of the individual members is small in comparison to the costs of effective participation in the proceeding. (§ 1802(g).) The members of CHRC's constituent organizations, as well as the individual members of CHRC itself, are small residential customers whose individual economic interests in this proceeding are small relative to the costs of participation. The cost of CHRC's participation substantially outweighs the economic benefit to an individual customer it represents. CHRC has therefore shown significant financial hardship. A finding of significant financial hardship, however, in no way ensures compensation. (§ 1804(b)(2).)

Section 1804(a)(2)(A)(i) requires NOIs to include a statement of the nature and extent of the customer's planned participation in the proceeding to the

² CHRC states that it does not poll its members to determine whether they are residential or other types of customers, so no precise breakdown among types of customers is available.

extent this can be predicted. CHRC has already filed initial comments in this proceeding, and expects to prepare testimony, participate in any hearings or workshops that are conducted, and submit briefs and comments, as required. Because a scoping memo had not been issued by the time the NOI was due, CHRC identified only the general issues on which it will participate. CHRC also states that it will coordinate its efforts with other non-governmental organizations appearing in this proceeding.

Section 1804(a)(2)(A)(ii) requires that NOIs include an itemized estimate of the compensation the customer expects to receive. CHRC estimates a total projected budget of \$38,500 for this case, based on proposed hourly rates for both attorneys and expert witnesses, as well as a proposed budget for expenses, which will be addressed in its Request for Compensation.

4. ED

ED is a non-profit membership organization with approximately 55,000 members in California, at least 25,000 of whom are residential customers of the respondents, PG&E, SCE, and SDG&E. ED states that it has a long-standing interest in minimizing the economic and environmental costs of reliable energy services in California. ED notes that its members give high priority to the need to preserve environmental quality in the operation and maintenance of electric utility generating facilities and in the provision of service to utility customers. ED states that it has participated in Commission proceedings related to energy efficiency and alternative generation on behalf of its members since the 1970s, receiving an award of compensation in the main restructuring docket, Rulemaking (R.) 94-04-031/Investigation (I.) 94-04-032.

ED states that it is a “Category 2” customer because it is a representative who has been authorized by a customer or a group of customers. ED notes that,

under its former name of Environmental Defense Fund, it has previously been found to be a Category 2 customer in Application (A.) 98-05-014/A.98-05-022 (Administrative Law Judge's (ALJ) Ruling on Eligibility to Claim Compensation, March 12, 1999), and that its situation today is substantially similar. ED meets the second definition of customer in § 1802(d).

Section 1804(a)(2)(A)(i) requires NOIs to include a statement of the nature and extent of the customer's planned participation in the proceeding to the extent this can be predicted. ED expects to participate actively, and intends to prepare testimony, participate in any hearings that are conducted, and submit briefs and comments, as required. Because a scoping memo had not been issued by the time the NOI was due, ED has not identified specific issues on which it will participate. ED also states that it will coordinate its efforts with other organizations appearing in this proceeding.

Section 1804(a)(2)(A)(ii) requires that NOIs include an itemized estimate of the compensation the customer expects to receive. ED estimates a total projected budget of \$36,500 for this case, based on proposed hourly rates for both attorneys and expert witnesses, as well as a proposed budget for expenses, which will be addressed in its Request for Compensation.

ED has elected, in accordance with § 1804(a)(2)(B), to defer its showing of significant financial hardship to the filing of its request for compensation.

5. TURN

TURN is organized to represent and advocate the interests of consumers of public utility services in California. TURN qualifies as a customer because it is an organization that is authorized by its articles of incorporation to represent the interests of consumers, a portion of whom we have determined to be residential

customers.³ TURN meets the third definition of customer, as set forth in § 1802(b).

TURN seeks, pursuant to § 1804(b)(1), a determination that it faces significant financial hardship in participating in this proceeding. Since TURN is a Category 3 customer, it must show that the economic interest of the individual members is small in comparison to the costs of effective participation in the proceeding. (§ 1802(g).) TURN's members are small residential customers whose individual interests in this proceeding are small relative to the costs of participation. In addition, the cost of TURN's participation in Commission proceedings substantially outweighs the benefit to an individual customer it represents.

A rebuttable presumption of eligibility exists because TURN received a finding of significant financial hardship in an ALJ Ruling issued on March 25, 2003 in A.02-07-050. This proceeding commenced within one year of that finding. Therefore, in accordance with § 1804(b)(1), the rebuttable presumption created in A.02-07-050 is applicable. A finding of significant financial hardship, however, in no way ensures compensation. (§ 1804(b)(2).)

Section 1804(a)(2)(A)(i) requires NOIs to include a statement of the nature and extent of the customer's planned participation in the proceeding to the

³ TURN provided the relevant portions of its articles of incorporation in its NOI in A.98-02-017. Although TURN's articles of incorporation do not specifically refer to residential customers, its articles of incorporation authorize it to represent consumers of public utilities services. TURN has approximately 30,000 dues paying members, the majority of which are residential ratepayers. TURN does not poll its members to determine whether they are residents or small businesses, so no percentage split is available.

extent this can be predicted. TURN expects to conduct discovery, prepare testimony, participate in any hearings that are conducted, and submit briefs and comments, as required. Because a scoping memo had not been issued by the time the NOI was due, TURN has not identified specific issues on which it will participate.

Section 1804(a)(2)(A)(ii) requires that NOIs include an itemized estimate of the compensation the customer expects to receive. TURN estimates a total projected budget of \$90,950 for this case, based on proposed hourly rates for both attorneys and expert witnesses which will be addressed in its Request for Compensation.

IT IS RULED that:

1. The California Hydropower Reform Coalition (CHRC) is a customer as that term is defined in § 1802(b) and has met the eligibility requirements of § 1804(a), including the requirement that it establish significant financial hardship, and is found eligible for compensation in this proceeding.

2. Environmental Defense is a customer as that term is defined in § 1802(b) and has met the eligibility requirements of § 1804(a), with the exception of the showing of significant financial hardship, and is found eligible for compensation in this proceeding, subject to a showing of significant financial hardship at the time it seeks an award of compensation.

3. The Utility Reform Network is a customer as that term is defined in § 1802(b) and has met the eligibility requirements of § 1804(a), including the requirement that it establish significant financial hardship, and is found eligible for compensation in this proceeding.

4. A finding of significant financial hardship in no way ensures compensation.

Dated August 7, 2003, at San Francisco, California.

/s/ ANNE E. SIMON

Anne E. Simon
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Regarding Notices of Intent to Claim Compensation on all parties of record in this proceeding or their attorneys of record.

Dated August 7, 2003, at San Francisco, California.

/s/ ELIZABETH LEWIS

Elizabeth Lewis

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at

(415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.